

REMARKS

By the foregoing Amendment, Claims 1, 13, 14, 20, 23 and 24 are amended, Claim 8 is cancelled and new Claims 32 and 33 are presented. Entry of the Amendment, and favorable consideration thereof, is earnestly requested. Claims 2, 3, 7, 11 and 12 having been previously cancelled, Claims 1, 4-6, 9, 10 and 13-33 are currently pending.

All Claims stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bergsbaken et al. (U.S. Patent No. 5,452,729) in view of Ruben (U.S. Patent No. 4,095,300). Applicant respectfully asks the Examiner to reconsider these rejections in view of the above Amendments and the following Remarks.

The present invention is directed to a fitted table covering that may conveniently and quickly be affixed to a table and to provide an appealing visual presentation that does not require the use of installation tools and that will not damage the table. To this end, all claims require a table cover having a top cover formed of a polymeric film, a plurality of side drops formed of the polymeric film, each extending outwardly from a respective one of the sides of the top cover and being folded generally orthogonal to the top cover to extend downwardly to a free edge, the free edges of the plurality of side drops and the plurality of pre-fitted corners together define a periphery or contour having a shape and dimensions *substantially identical to* a shape and dimensions of the periphery or contour of the top cover. Further, all independent claims have been amended to require that the table cover is monolithic and *consists essentially of a single piece of thin vinyl*. Applicant respectfully submits that at least the above highlighted limitations are not disclosed, taught or suggested by the cited prior art, either when taken alone or when properly combined.

Before even analyzing the cited prior art, Applicant would like to direct the Examiner's attention to Reexamination Application No. 90/008,659 (which is a Reexamination of U.S. Patent No. 7,178,470). Particularly, Applicant directs the Examiner's attention to the Notice of Intent to Issue *Ex Parte* Reexamination Certificate mailed September 2, 2008 (copy attached hereto as Exhibit A), and even more particularly to the Statement of Reasons for Patentability and/or Confirmation, setting forth the reasons why Claim 1 of Reexamination Application No. 90/008,659 is patentable. Applicant has added new Claim 32 to the present application, which claim Applicant believes includes all of the elements the Examiner in Reexamination Application No. 90/008,659 deems patentable. Further, Applicant believes that new Claim 33 and amended Claims 1, 14, 23 and 24 require at least all of these patentable elements, with the exception that these claims require a polygonal shape rather than a rectangular shape, and Applicant believes that amended Claims 13 and 20 require at least all of these patentable elements, with the exception that these claims do not require a particular shape. However, Applicant believes that the specific shape of the table and/or the table cover is not what renders the claims patentable.

Turning now to the currently cited prior art, Bergsbaken et al. is directed to a surgical drape, and improved assembly techniques for making the same, which are particularly designed and configured for use with T-shaped and L-shaped operating room tables. More specifically, Bergsbaken et al. is concerned with providing a gusset assembly for use in the internal corners of such T-shaped and L-shaped tables, there being two interior corners on T-shaped tables and one interior corner on L-shaped tables. Ruben is directed to a method of constructing the fitted corners of a bedcover involving a particular stitching configuration.

Applicant points out that all claims require, among other elements, that the free edges of the plurality of side drops define a periphery or contour having a shape and dimensions substantially identical to a shape and dimensions of the periphery or contour of the top cover. Moreover, as mentioned above, all existing independent claims have been amended to require, and both newly added claims require, that the table cover is monolithic and consists essentially of a single piece of thin vinyl. Applicant respectfully submits that the hypothetical device resulting from the combination suggested by the Examiner would not satisfy these limitation.

It is well settled that if a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then the proposed modification would not be obvious. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). In the present case, if the Bergsbaken et al. surgical drape was modified such that the free edges of the side drops defined a periphery or contour having a shape and dimensions *substantially identical to* a shape and dimensions of the periphery or contour of the top cover, the Bergsbaken et al. invention would also no longer satisfactorily function for its intended purpose. Similarly, if the Bergsbaken et al. surgical drape were modified to be monolithic and consist essentially of a single piece of thin vinyl, there would be no gussets and again, the Bergsbaken et al. invention would also no longer satisfactorily function for its intended purpose.

With respect to the exterior corners of the Bergsbaken et al. surgical drape, there being six on T-shaped tables and five on L-shaped tables, these corners are and must be freely draping, not helping to define a shape and dimensions

substantially identical to a shape and dimensions of the periphery or contour of the top cover. This is true because the surgical drape of Bergsbaken et al. is draped over a patient reclining on a T-shaped or L-shaped operating room table. As such, and because every patient is different in size, the exterior corners of Bergsbaken et al. could not possibly help to define a shape and dimensions *substantially identical to* a shape and dimensions of the periphery or contour of the top cover, or the surgical drape could not accommodate patients of varying size. Therefore, it would not have been obvious to have replaced the exterior corners of the Bergsbaken et al. surgical drape with the stitched corners of the Ruben bedcover.

Stated another way, if the free edges of the side drops defined a periphery or contour having a shape and dimensions *substantially identical to* a shape and dimensions of the periphery or contour of the top cover, the result would be a tight-fitting table cover, and no longer a surgical drape. As such, *no patient at all* would fit under the pre-fitted cover.

With respect to the interior corners of the Bergsbaken et al. surgical drape, there being two on T-shaped tables and one on L-shaped tables, it is critical in the invention of Bergsbaken et al. that these corners be “slit” and that a piece of material (i.e., a gusset) be attached between the slit edges 44, 46 in order for the surgical drape to drape properly over a patient reclining on a T-shaped or L-shaped table. This can be clearly envisioned by examining Figure 7 of Bergsbaken et al., wherein it can be clearly seen that if the stitched corner of Ruben were used instead of the gusset (i.e., if slit edges 44, 46 were stitched to one another), there would be significant bunching at the interior corner, and the Bergsbaken et al. surgical drape would no longer function as intended. In fact, the gusset of material disposed between the slit edges 44, 46 of the surgical drape is

the very crux of the invention disclosed in Bergsbaken et al., and if the slit edges were merely stitched together, there would be no reason to create the slit in the first place. Therefore, it would not have been obvious to have replaced the interior corners of the Bergsbaken et al. surgical drape with the stitched corners of the Ruben bedcover. And even if such were done, the resulting cover would not be one that is *monolithic and consists essentially of a single piece of thin vinyl*.

In the outstanding Office Action, the Examiner has stated that “it is unclear how the expression ‘where the free edges of the plurality of side drops together define a generally polygonal contour having a shape and dimension substantially identical to a shape and dimensions of the generally polygonal contour of the top cover’ define structure other than that of the references used and therefore the preceding rejections are again made.” Applicant respectfully submits that it is this limitation which causes the table cover to have a box-like configuration (i.e., where the side drops extend straight downwardly from the top cover, like an up-side-down box with no lid), and consequently what allows the table cover to grip or “hug” the table and hold the table cover thereon. This is extremely different than both cited references, where the “free edges” of the “side drops” define a periphery that is significantly larger than the periphery of the top cover, in which case the table cover loosely drapes over the tabletop, rather than gripping it as does the table cover of the present invention. (See, e.g., Figure 7 of Bergsbaken et al. and Figure 5 of Ruben. This is also much different than the numerous prior art references that disclose “fitted sheet” type table covers that wrap around and under the tabletop.

For the foregoing reasons, Applicant respectfully submits that all pending claims, namely Claims 1, 4-6, 9, 10 and 13-33, are patentable over the references of record, and earnestly solicits allowance of the same.

Respectfully submitted,

September 23, 2008

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Exhibit A



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/008,659	05/18/2007	7,178,470		4076

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EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED: 09/02/2008

Please find below and/or attached an Office communication concerning this application or proceeding.



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EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO. 90/008,659.

PATENT NO. 7,178,470.

ART UNIT 3993.

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above identified *ex parte* reexamination proceeding (37 CFR 1.550(f)).

Where this copy is supplied after the reply by requester, 37 CFR 1.535, or the time for filing a reply has passed, no submission on behalf of the *ex parte* reexamination requester will be acknowledged or considered (37 CFR 1.550(g)).

**Notice of Intent to Issue
Ex Parte Reexamination Certificate**

Control No.

90/008,659

Patent Under Reexamination

7,178,470

Examiner

AARON J. LEWIS

Art Unit

3993

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☒ Prosecution on the merits is (or remains) closed in this *ex parte* reexamination proceeding. This proceeding is subject to reopening at the initiative of the Office or upon petition. Cf. 37 CFR 1.313(a). A Certificate will be issued in view of
- (a) ☒ Patent owner's communication(s) filed: 20 June 2008.
- (b) ☐ Patent owner's late response filed: _____.
- (c) ☐ Patent owner's failure to file an appropriate response to the Office action mailed: _____.
- (d) ☐ Patent owner's failure to timely file an Appeal Brief (37 CFR 41.31).
- (e) ☐ Other: _____.
- Status of *Ex Parte* Reexamination:
- (f) Change in the Specification: ☐ Yes ☒ No
- (g) Change in the Drawing(s): ☐ Yes ☒ No
- (h) Status of the Claim(s):
- (1) Patent claim(s) confirmed: _____.
- (2) Patent claim(s) amended (including dependent on amended claim(s)): 1-6, 8-10 and 12-23 **AND 8-23**
- (3) Patent claim(s) cancelled: 7.
- (4) Newly presented claim(s) patentable: 24-32.
- (5) Newly presented cancelled claims: _____.
2. ☒ Note the attached statement of reasons for patentability and/or confirmation. Any comments considered necessary by patent owner regarding reasons for patentability and/or confirmation must be submitted promptly to avoid processing delays. Such submission(s) should be labeled: "Comments On Statement of Reasons for Patentability and/or Confirmation."
3. ☐ Note attached NOTICE OF REFERENCES CITED (PTO-892).
4. ☐ Note attached LIST OF REFERENCES CITED (PTO/SB/08).
5. ☐ The drawing correction request filed on _____ is: ☐ approved ☐ disapproved.
6. ☐ Acknowledgment is made of the priority claim under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the certified copies have
- ☐ been received.
- ☐ not been received.
- ☐ been filed in Application No. _____.
- ☐ been filed in reexamination Control No. _____.
- ☐ been received by the International Bureau in PCT Application No. _____.
- * Certified copies not received: _____.
7. ☒ Note attached Examiner's Amendment.
8. ☐ Note attached Interview Summary (PTO-474).
9. ☐ Other: _____.

cc: Requester (if third party requester)

U.S. Patent and Trademark Office
PTOL-469 (Rev.08-06)

Notice of Intent to Issue Ex Parte Reexamination Certificate

Part of Paper No 20080828

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DETAILED ACTION***Reexamination***

1. An examiner's amendment to the record appears below. The changes made by this examiner's amendment will be reflected in the reexamination certificate to issue in due course.

The amendment filed 06/20/2008 proposes amendments to claims 6 and 11 in which matter to be omitted is indicated by striking through that matter. Striking through matter to be omitted does not comply with 37 CFR 1.530(d)-(j), which sets forth the manner of making amendments in reexamination proceedings. More specifically, 37CFR 1.530(f)(1) requires matter to be omitted by the reexamination proceeding must be enclosed in brackets. Therefore, claims 6 and 11 have been reformatted to include brackets around the matter to be omitted. By this examiner's amendment, the "strikethroughs" as submitted in the 06/20/2008 amendment have been removed and brackets substituted therefor. No substantive changes/amendments have been made to the claim language.

6. (amended) The table cover of claim 1, wherein the table [cover] is [for covering] a trade show table [of a standard length and width].

11. (amended) A method of forming a table cover for covering a table of generally ^{PRE-DETERMINED} ~~predetermined~~ size and having a top surface and a plurality of sides, said method comprising the steps of: providing a polymeric film in a generally rectangular shape having a length and width, four terminal outermost edges and four corners; removing generally rectangular portions of the polymeric film at each of the four corners

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of the polymeric film so as to define a generally rectangular central portion having a length and a width and four generally rectangular side portions, each side portion having an edge contiguous with the central portion, each side portion having two opposite ends created by the removal of polymeric material, and each side portion terminating at [a free] one of the four terminal outermost edges opposite to the edge that is contiguous with the central portion; bending each of the four side portions to be generally orthogonal to the central portion such that each one of the two opposite ends of each side portion abut another one of the two opposite ends of another adjacent side portion and such that the [free] terminal edges of the side portions define a length and a width that are substantially the same as the length and the width of the central portion; and permanently joining the abutting ends of the side portions along seams that are generally orthogonal to the central portion to form four fitted corners of the table cover that hold the table cover on the table once the table cover is placed thereon.

Patentable Subject Matter

2. Claims 1-6,8-32 are patentable.

STATEMENT OF REASONS FOR PATENTABILITY AND/OR CONFIRMATION

The following is an examiner's statement of reasons for patentability and/or confirmation of the claims found patentable in this reexamination proceeding:

As to claim 1, the overall claimed combination of a table cover for cover a generally rectangular table of pre-determined size including four sides formed of the polymeric film, each extending outwardly from a respective one of the edges of the top

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surface and bent down at an angle of about 90° from the top surface such that the four sides together define a length and a width that is substantially the same as the length and the width of the top surface, and each of the four sides having a free edge opposite to a respective edge of the top surface and two end edges orthogonal to the top surface; and wherein the table cover is monolithic and consists essentially of a single piece of thin vinyl, is neither anticipated nor rendered obvious by the prior art of record. Claims 2-6, 8-10, 24-32 depend from claim 1 and are likewise patentable.

As to claim 11, the overall claimed combination of a method of forming a table cover for covering a table of generally predetermined size including the step of bending each of the four side portions to be generally orthogonal to the central portion such that each one of the two opposite ends of each side portion abut another one of the two opposite ends of another adjacent side portion and such that the terminal edges of the side portions define a length and a width that are substantially the same as the length and the width of the central portion, is neither anticipated nor rendered obvious by the prior art of record. Claims 12-23 depend from claim 11 and are likewise patentable.

Any comments considered necessary by PATENT OWNER regarding the above statement must be submitted promptly to avoid processing delays. Such submission by the patent owner should be labeled: "Comments on Statement of Reasons for Patentability and/or Confirmation" and will be placed in the reexamination file.

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All correspondence relating to this *ex parte* reexamination proceeding should be directed as follows:

By U.S. Postal Service Mail to:

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